



**SOUTHERN COACHELLA VALLEY COMMUNITY  
SERVICES DISTRICT**

PO Box 302  
Thermal, CA 92274  
91260 Avenue 66  
Mecca, CA 92254  
760-396-1014 SCVCSD@Verizon.net

**Board of Directors**

Rebecca Broughton, President  
Ann Wells, Vice President  
Eugene Kitagawa  
Frank Figueroa  
Maria Machuca

Ben Crowson, General Mgr.  
Steve Quintanilla, Attorney  
Misty Reynolds, Chief of Police

*Sent Via Facsimile, Email and Certified Mail – Return Receipt Requested*

October 9, 2020

Hon. John W. Vineyard, Presiding Judge  
Superior Court of California, County of Riverside  
4050 Main Street  
Riverside, CA 92501  
Fax: VIA EXECUTIVE OFFICE @ (951) 777-3164

Riverside County Grand Jury  
Post Office Box 829  
Riverside, CA 92502  
Fax: (951) 955-8989

Riverside County Clerk-Recorder  
2720 Gateway Drive  
Riverside, CA 92507  
Email: accrmail@asrelkrec.com

**Re: Response to 2019-2020 Grand Jury Report: SAVED BY THE TRASH, BUT  
FOR HOW LONG?**

**Financing Supplemental Law Enforcement in the Southern Coachella Valley  
Community Services District**

**Report Issued: 07/06/2020**

**Report Public: 07/09/2020**

**Response Due: 10/09/2020**

Dear Hon. Judge Vineyard and Grand Jury Members:

This letter has been prepared and is respectfully submitted in response to the 2019-2020 Grand Jury Report: "SAVED BY THE TRASH, BUT FOR HOW LONG? - Financing Supplemental Law Enforcement in the Southern Coachella Valley Community Services District." ("Grand Jury Report") This response is submitted on behalf of the governing body ("Board of Directors") of the Southern Coachella Valley Community Services District ("the District") pursuant to California Penal Code Section 933(c), which requires the governing body of the public agency subject to a grand jury report to comment to the presiding judge of the superior court on the findings and recommendations contained in a grand jury report pertaining

to matters under the control of the governing body no later than 90 days after the grand jury submits a final report.

As set forth in the Grand Jury Report, it is requested that the Board of Directors respond to Findings and Recommendations numbers 1 – 4, as set forth in the Grand Jury Report. Incidentally, while the Directors of the Board of Directors are elected, the District respectfully disagrees that they are considered to be elected Riverside County (“County”) officials since each Director is elected by the qualified voters within the District’s jurisdictional service boundaries rather than the County at large.

### **Grand Jury Report Findings**

- 1. The District can no longer fund the law enforcement function solely through the fixed property tax. With department heads and city employees [sic]*
- 2. A flat, un-adjustable property tax to finance this ongoing cost-variable service requires going back to the voters repeatedly to raise the tax.*
- 3. Based on discussion with tax experts, it appears that the use of rubbish fund money may be in violation of Proposition 218 and the California Constitution, Section XIII C, and Section XIII D, requiring that money designated for one function cannot be used for another.*
- 4. The rubbish fund has less money available to clean up the community, such as graffiti abatement and removal.*

### **Grand Jury Report Recommendations**

- 1. The Board put forth a ballot measure for the November 2020 election or a special election to adequately fund the District.*
- 2. The ballot measure recommended by the Board include an appropriate escalator to keep up with the cost of the service, perhaps tying it directly to the price of the Sheriff’s services.*
- 3. Prior to the ballot measure, the Board get a legal opinion on whether their current “borrowings” can survive a challenge in court.*
- 4. The Board spend the proceeds of the franchise fee exclusively for community clean up.*

### **Scope of Responses**

With respect to the “findings” contained in the Grand Jury Report, the District is aware that pursuant to Penal Code Section 933.05, the District’s responses must indicate one of the following: (1) The District agrees with the finding; or (2) The District disagrees wholly or

partially with the finding, in which case the response must specify the portion of the finding that is disputed and include an explanation of the reasons therefor.

Regarding each "recommendation" contained in the Grand Jury Report, the District understands that pursuant to Penal Code 933.05, the District is required to report one of the following actions: (1) The recommendation has been implemented, with a summary regarding the implemented action; (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation; (3) The recommendation requires further analysis, with an explanation and the scope and parameters of such an analysis or study, and a timeframe for the matter to be prepared for discussion by the District's governing body, provided that the timeframe does not exceed six months from the date of publication of the Grand Jury Report; and (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

In light of the foregoing, the Board of Directors, as the governing body of the Southern Coachella Valley Community Services District, respectfully responds to the Grand Jury Report's Findings Nos. 1, 2, 3 and 4, and Recommendations Nos. 1, 2, 3 and 4 as follows:

### **Responses to Findings**

Please be advised that the District's responses to the findings below should not be interpreted to mean that the District is committed to adopting or implementing any certain policies or programs specifically referenced in the District's responses. The purpose of the District's responses is to demonstrate that the District is aware of the nature of each of the Grand Jury's findings and is interested in exploring various means and options that could effectively address a particular finding. As with all proposed policies and programs, the District must study them, assess their anticipated effectiveness, evaluate their costs and formally consider them in the context of noticed public meetings wherein interested members of the public are afforded an opportunity to meaningfully participate in the decision-making process through public comment, public testimony and other public input.

#### **Finding No. 1:**

*The District can no longer fund the law enforcement function solely through the fixed property tax. With department heads and city employees [sic]*

#### **Response to Finding No. 1:**

The District agrees with this finding in that the property tax revenue produced under the current property tax rates for the District, unless increased by the qualified voters of the District upon a 2/3<sup>rd</sup> vote, has not been sufficient on its own to cover the costs of the current level of law enforcement services provided by the District. If the qualified voters of the District continue to reject any increase in the current property tax rates to fund law enforcement services, and the District is unable to realize any alternative revenue sources for the District's General Fund, short of dissolving, the District may have no alternative but to drastically decrease the level of its

current law enforcement services, which could result in the loss of three sworn officers, one sergeant, and two deputies, who function as investigators, community outreach personnel and first responders for the District. Such a reduction in the current level of law enforcement services the District provides to the public would likely result in an increase in the current levels of crime such as burglary, theft of agricultural equipment, supplies and goods, larceny, motor vehicle theft and domestic violence. The District believes, however, that even with such cuts in the level of law enforcement services, the community will remain better served by the District than by the County, since the District would still be able to provide the community with an enhanced level of law enforcement services than the County, and continue to provide the local community with the ongoing benefits associated with local control, participation and responsiveness.

Incidentally, any inferences made in the Grand Jury Report that the District is served by the Thermal Sheriff's Station are not accurate. The Thermal Sheriff's Station serves the area in the vicinity of the Desert Resorts Regional Airport, which is located close to the Thermal Sheriff's Station and not within the territorial jurisdiction of the District. As such, should the District dissolve, it is not certain that the Sheriff deputies headquartered at the Thermal Sheriff's Station could or would continue to provide the communities encompassed by the District with any level of law enforcement services.

**Finding No. 2:**

*A flat, un-adjustable property tax to finance this ongoing cost-variable service requires going back to the voters repeatedly to raise the tax.*

**Response to Finding No. 2:**

The District generally agrees with this finding should the qualified voters of the District continue to reject any increase in the current property tax rates for the District or the District is unable to realize any alternative revenue sources for the District's General Fund to fund the current level of law enforcement services or any increased level of law enforcement services to meet the public safety demands of the District's growing community of residents, business owners, property owners, and taxpayers. However, a tax increase may not be the sole solution; there may be alternatives.

The District is interested in exploring opportunities of cost sharing programs with surrounding jurisdictions which also contract with the County for law enforcement services. The District plans to also explore opportunities to cooperate with other agencies that provide public safety-related services such as, but not limited to, the California Highway Patrol, the California Department of Food and Agriculture, Imperial Irrigation District and other local agencies and special districts within the District – to name a few. Moreover, the District plans to explore community-based policing alternatives and solutions such as, but not limited to, Citizens on Patrol and Neighborhood Watch programs, in addition to alternative police models that address the root causes of crime (rather than policing the effects) which focus on mental health issues,

publicly financed supportive housing, anti-violence programs, trauma services for young people, education, increased school counseling, after-school programs and restorative justice programs.

The District also believes it is imperative that any renegotiation of its law enforcement services agreement with the County meaningfully and effectively address the issue of recognizing the impacts negotiated labor agreements by and between the County and its public safety labor unions/associations have on the limited budgets of contract agencies such as the District. Such impacts may relate to the negotiated terms related to automatic cost of living increases, merit increases and other increases in the cost of labor. For example, the County should consider tolling the implementation of any such cost increases on its contract agencies based on the respective agency's ability to pay during the term of its current law enforcement services agreement.

If the District is successful with achieving any of the above objectives and/or implementing any of the above ideas, this could mitigate the need to constantly ask the qualified voters of the District to approve a constant stream of tax measures to pay for the law enforcement service needs and demands of a growing community.

**Finding No. 3:**

*Based on discussion with tax experts, it appears that the use of rubbish fund money may be in violation of Proposition 218 and the California Constitution, Section XIII C, and Section XIII D, requiring that money designated for one function cannot be used for another.*

**Response to Finding No. 3:**

The District wholly disagrees with this finding as it mischaracterizes the nature and utilization of the Rubbish Fund which contains the payment of Waste Fees, Franchise Fees and the waste hauler's "other costs of doing business."

The District contracts with Burrtec Waste Industries, Inc. ("Burrtec") via an "Exclusive Franchise Agreement," dated February 15, 2007, to collect, transfer, recycle, process and dispose of residential and commercial solid waste. Property owners within the District are charged a solid waste fee ("Waste Fee"). The Waste Fees are charged to residential and commercial properties for curbside solid waste collection. The Waste Fees collected from residential users are placed on the property tax rolls to be collected by the County. In 2019, the Board of Directors adopted Resolution No. 2019-04 authorizing Burrtec to prescribe and adopt charges for waste hauler services and to collect said charges on the property tax rolls, as permitted pursuant to Government Code Section 61115. However, the Waste Fees collected from commercial users are collected directly by Burrtec.

The District does not dispute that solid waste collection is mandated as part of property ownership and is therefore a property-related fee which is subject to applicable restrictions set forth at Proposition 218 and the California Constitution, Section XIII C, and Section XIII D,

including the restriction that use of the proceeds must be limited to the purpose for which the fee was collected.

The "Rubbish Fund" is the fund into which proceeds from the Waste Fee are deposited.

Burrtec pays the District a negotiated Franchise Fee, which has been set at 10% of the "Gross Receipts." In the Franchise Agreement, "Franchise Fee" means "the fee paid by [Burrtec] to the District . . . for the right to hold the Franchise . . ." The Franchise Agreement further defines, "Gross Receipts" as follows:

*1.28 Gross Receipts*

*"Gross Receipts" means any and all revenues, receipts, or compensation in any form received by the Company or its subsidiaries, parent companies or other Affiliates of the Company, for the Collection and transportation of Solid Waste pursuant to this Agreement, including, but not limited to, monthly Customer fees for Collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business. Sales revenue from the sale of Recyclable Material is included in Gross Receipts; revenue generated from as the operator/owner of landfills and/or transfer stations are excluded to the extent the fees charged this Agreement for such services are no more than the fair market value for such expenses. "Gross Receipts" does include disposal charges, tipping fees, Disposal Costs, AB 939 charges. [Emphasis added.]*

As reflected above, the "Gross Receipts," upon which the Franchise Fee is calculated includes revenue from customer fees which includes not only Burrtec's cost of hauling waste, but also "Franchise Fees" and "other cost[s] of doing business." The revenue sources for the Franchise Fee also include revenue from the sale of "Recyclable Materials," and excess revenue (greater than fair market value) generated from landfills and transfer stations owned and operated by Burrtec.

It has long been held that franchise fees generally fall within article XIII C's exception for charges for the use of government property (i.e., fees for use of government property are not taxes requiring voter approval). Franchise fees generate discretionary (i.e., general fund) revenues, which may be used for any lawful purpose. The Waste Fees paid by the property owners have been used exclusively for the purposes it was collected – hauling waste. The loan proceeds, however, used to fund law enforcement services were derived solely from the Franchise Fees and the interest earned thereon rather than the Waste Fees, although both the Franchise Fees and the Waste Fees are both initially deposited into the same Rubbish Fund, with the Franchise Fee (10% of the Gross Receipts) eventually paid by Burrtec to the District.

**Finding No. 4:**

*The rubbish fund has less money available to clean up the community, such as graffiti abatement and removal.*

**Response to Finding No. 4:**

The District agrees with this finding, but upon repayment of the loan there could be an increase in the available funds to provide for graffiti abatement. The District has requested its General Legal Counsel to commence preparing the necessary documentation to memorialize the loan of the proceeds from the District's Rubbish Fund to the District's General Fund, if it is legally determined such a loan is permissible under the law or necessary, since the "loan" could probably be dealt with as a fund transfer, since both funds are controlled by the same legal entity. Technically, the source of the "loan" proceeds is from the District's "Environmental Account Operating Budget" that consists solely of the Franchise Fees and interest earned thereon; it does not include any waste hauling fees.

It is anticipated that General Legal Counsel will make his final legal determination within six months of the date of the publication of the Grand Jury Report.

Notwithstanding the above, the District concurrently plans to explore other sources of revenue for graffiti abatement, along with simultaneously exploring ideas related to graffiti deterrent and enforcement plans, programs, regulations and laws that the District may be authorized to adopt, administer, implement and enforce. The purpose of exploring other ideas of how to tackle graffiti in the community is to determine whether there are any alternatives that may help mitigate the costs incurred by the District in implementing a comprehensive, aggressive and effective graffiti deterrent, enforcement and abatement program.

For instance, the District will evaluate whether the District, like cities and counties, may use public funds for graffiti removal from both publicly and privately owned structures upon the adoption of an ordinance pursuant to the Government Code Section 53069.3(a). Government Code Section 53069.3(a) provides that cities and counties may enact an ordinance to provide for the use of city or county funds to remove graffiti from publicly or privately owned real or personal property located within their respective jurisdictions. It further provides that the city or county may replace or repair public or privately owned property within their jurisdictions that have been defaced with graffiti that cannot be removed cost effectively – subject to securing the consent of the public entity having jurisdiction over the property, and in the case of privately owned real or personal property, only after securing the consent of the owner or possessor.

If the District is authorized to adopt a graffiti abatement ordinance, such as described herein, the District would then be authorized to enact a companion ordinance to establish procedures to recover the District's funds used to remove graffiti from publicly or privately owned real or personal property within the District. This could be an effective graffiti abatement mechanism that could permit the District to increase its level of graffiti abatement services throughout the community, with the District's costs being mitigated through cost recovery. The District has requested its General Legal Counsel to provide a determination within six months of the date of the publication of the Grand Jury Report regarding whether the District may adopt such ordinances under Government Code.

In the addition to the above, the District plans to explore immediately a reward policy and program pursuant to Government Code Section 53069.5 which allows the District to offer and

pay a reward, in an amount determined by the District, for information leading to the determination of the identity of, and the apprehension of, any person who willfully damages or destroys any property through graffiti.

The District has also requested its General Legal Counsel determine whether the District may adopt an ordinance under Government Code Section 38771 that could permit the District to declare by ordinance what constitutes a public nuisance. If permitted to adopt such an ordinance, the District will immediately adopt an ordinance declaring graffiti or any defacement of any public or private personal or real property a public nuisance. Under such an ordinance, the District would be permitted, pursuant to Government Code Section 38772, to summarily abate any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material at the expense of the person responsible for creating, causing, or committing the nuisance. The District would also be permitted by ordinance to make the expense of abatement of graffiti a lien against the property of the responsible person. In effect, such an ordinance would permit the District to recover from the responsible person court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, plus the law enforcement costs incurred by the District in identifying and apprehending the responsible person.

Moreover, the District has requested its General Legal Counsel to determine whether the District may adopt an ordinance that makes the abatement and related administrative costs related to the District's costs of abating graffiti a special assessment against any parcel of land owned by the responsible person. Unlike a lien, a special assessment may be collected at the same time and in the same manner as ordinary property taxes are collected and are subject to the same penalties and the same procedures regarding delinquencies applicable to ordinary property taxes.

Furthermore, the District will consider adopting a resolution formally requesting that the Riverside County District Attorney's Office, pursuant to Penal Code Section 594, seek the maximum fines and penalties related to any defendant who is convicted for maliciously defacing with graffiti any real or personal property not his or her own, within the District. This includes sentencing a vandal to county jail or imposing a fine on the responsible person and possible restitution for the cost of abating any defacement, damage, or destruction.

The District will also formally request that the County include in its work release programs the option of performing graffiti cleanup within the District, pursuant to the alternative work release programs described in the Penal Code.

Finally, the District plans to instruct its General Manager and staff to reach out to the local business community to discuss the idea of forming a "Business Improvement District" pursuant to the Parking and Business Improvement Area Law of 1989 (1989 Act) (Streets & Highway Code §§36500-36551) and the Property and Business Improvement District Law of 1994 (1994 Act) (Streets & Highways Code §§36600-36671). Both laws enable the levy of annual assessments on businesses (or on property), to finance certain improvements, such as, parking facilities, parks, fountains, benches, trash receptacles, street lighting, decorations, kiosks, booths, public restrooms, lighting and heating facilities, planting areas, ramps, sidewalks, security



facilities and equipment, improvements to existing streets, and rehabilitation or removal of structures. In addition to the above, a Business Improvement District can use the proceeds of its annual assessments to fund graffiti abatement.

In light of the foregoing, although the District agrees with the finding that the “[R]ubbish [F]und has less money available to clean up the community, such as graffiti abatement and removal,” the District is committed to exploring other alternatives to mitigating the area’s extensive graffiti problem, that are not solely dependent on the proceeds of the Rubbish Fund. This includes not only exploring other sources of revenue for graffiti abatement, but also ideas related to graffiti deterrent plans, programs, regulations and laws that the District may be authorized to adopt, administer, implement and enforce. The District believes this may help mitigate the costs incurred by the District in implementing a comprehensive, aggressive and effective graffiti deterrent and abatement program.

The District is committed to pursuing all of the above ideas as soon as possible, no later than six months of the publication of the Grand Jury Report, notwithstanding the communication challenges and other logistical hurdles presented by the COVID-19 pandemic crisis.

### **Recommendations**

Please be advised that the District’s responses to the recommendations set forth below should not be interpreted to mean that the District is committed to adopting or implementing any certain policies or programs specifically referenced in the District’s responses. The purpose of the District’s responses is to demonstrate that the District is aware of the nature of each of the Grand Jury’s recommendations and is interested in exploring various means and options that could effectively address a particular recommendation. As with all proposed policies and programs, the District must study them, assess their anticipated effectiveness, evaluate their costs and formally consider them in the context of noticed public meetings wherein interested members of the public are afforded an opportunity to meaningfully participate in the decision-making process through public comment, public testimony and other public input.

#### **Recommendation No. 1:**

*The Board put forth a ballot measure for the November 2020 election or a special election to adequately fund the District.*

#### **Response to Recommendation No. 1:**

This recommendation requires further analysis, since the District believes it is important to solicit input from all stakeholders within the District such as residents, business owners, farmers, property owners, and property taxpayers to determine what level of law enforcement services are necessary to meet the reasonable demands of the public served by the District and to assess the cost of such services. Moreover, it is important that the District commence meeting with the Riverside County Sheriff’s Department and other County officials to determine whether the County remains committed to providing law enforcement services to the District, in addition to

meeting with other agencies to determine whether there are any reasonable, feasible and affordable alternatives to continuing contracting with the County for law enforcement services.

The District believes it is critical to also simultaneously explore opportunities of cost sharing programs with surrounding jurisdictions which also contract with the County for law enforcement services, and also explore opportunities to cooperate with other agencies which provide public safety-related services such as, but not limited to, the California Highway Patrol, the California Department of Food and Agriculture, Imperial Irrigation District and other public agencies and special districts within the District. The District also plans to concurrently explore community-based policing alternatives and solutions such as, but not limited to, Citizens on Patrol and Neighborhood Watch programs, in addition to alternative police models that address the root causes of crime (rather than policing the effects) which focus on mental health issues, publicly financed supportive housing, anti-violence programs, trauma services for young people, education, increased school counseling, after-school programs and restorative justice programs.

In light the above concerns, a significant amount of time and resources will be needed to schedule, organize and conduct the necessary public workshops, prepare, distribute and interpret relevant public surveys, develop a strategic public safety plan, produce and distribute "information-only" material related to the proposed tax measure, and seek and retain a municipal finance consultant to assist the District with structuring a tax measure with respect to its proposed rate, term, collection, administration, etc. Since the District is not permitted to advocate for the passage of a tax measure, it is imperative that any proposed tax measure receive meaningful input from all stakeholders for the purpose of reaching the broadest consensus possible involving all relevant stakeholder groups before the District commits to calling a special election for a proposed tax measure.

While it is not reasonable to expect that a special election can be scheduled within six months of the date of the publication of the Grand Jury Report, the District has already commenced taking steps toward achieving the goal of calling a special election, by conducting some internal review of the needs and demands for public safety services and analyzing the restrictions imposed on the District with respect to advocating for a proposed tax measure and the mechanics of calling a special election. However, due to the COVID-19 pandemic situation, the District is presented with some unique and unprecedented challenges with respect to the logistics of expeditiously scheduling, organizing and conducting the necessary meetings (as described above) in a manner that reflects the urgency of the situation. Notwithstanding the above, the District completely agrees with the Grand Jury's Report's assessment of the urgency of the situation and the District is committed to moving as expeditiously as possible in the context of the constraints imposed by the COVID-19 crisis on scheduling, organizing and conducting the necessary public meetings and workshops. In light of the foregoing, the District believes it will also need time to devise ways in which the aforementioned public meetings and workshops can be conducted in a manner that mitigates the perceived disconnection certain members of the general public may have with respect to participating in teleconferenced meetings due to the lack of personal contact and/or technological challenges.

**Recommendation No. 2:**

*The ballot measure recommended by the Board include an appropriate escalator to keep up with the cost of the service, perhaps tying it directly to the price of the Sheriff's services.*

**Response to Recommendation No. 2:**

While the District agrees with this recommendation, the District believes this recommendation does require further analysis. The analysis would include an assessment of whether the qualified voters in the District are receptive to the idea of including an "escalator" clause in a proposed tax measure in order to keep up with the costs of the current level of law enforcement services, or whether they prefer instead a reduced level of law enforcement services.

The analysis will also include a close review of what sort of escalator would be reasonable to use in the context of the current labor union agreement(s) by and between the County and its various labor organizations/associations which include members who provide the District with certain services under the District's current law enforcement services agreement with the County. However, even with an escalator clause, which the District believes is critical to include in a tax measure, the District's General Fund could still be overwhelmed with the increasing cost of labor, due to new, continuing, and inflexible expenses, because of rising pension costs and automatic employee raises and benefits guaranteed by the County. This is a topic that needs to be explored in further detail and included in any meaningful discussion pertaining to an escalator clause. The purpose of this exercise is to avoid creating any expectations by the voters that an automatic escalator will always guarantee a certain level of law enforcement services.

The District also plans to review all general law enforcement service agreements by and between the County and the various municipalities and districts within the County to determine whether any precedent has been set with respect to "tolling" any increase of "*the price of the Sheriff's services*" through the term of a law enforcement services agreement. This could be an alternative to including an escalator clause in a proposed tax measure. In other words, the District might be able to insist on including a provision in its next law enforcement agreement with the County that sets a "not-to-exceed" cost provision for each rate tied to labor costs.

Again, the District anticipates that a significant amount of time and resources will be needed to schedule, organize and conduct the necessary public workshops, prepare, distribute and interpret relevant public surveys, develop a strategic public safety plan, produce and distribute "information-only" material related to the proposed tax measure that includes an automatic escalator. The District also believes it is prudent to seek and retain a municipal finance consultant to assist the District with structuring a tax measure with respect to its proposed rate and escalator, based on the results contained in any surveys and/or issues raised during any public meetings and workshops involving relevant stakeholders in the community.

Since the District is not permitted to advocate for the passage of a tax measure, it is imperative that any proposed tax measure receive meaningful input from all relevant stakeholders in the community for the purpose of reaching the broadest consensus possible before the District

commits to calling a special election for a proposed tax measure that includes an automatic escalator.

Finally, perhaps an alternative to an escalator clause would be to simply present the proposed law enforcement services agreement(s) directly to the qualified voters of the District. This would directly inform the voters of the proposed costs associated with certain levels law enforcement services and could provide the voters with a choice between levels of service.

An analysis of the issue of an escalator clause, as described above, will commence as soon as possible within six months of the date of the publication of the Grand Jury Report.

**Recommendation No. 3:**

*Prior to the ballot measure, the Board get a legal opinion on whether their current "borrowings" can survive a challenge in court.*

**Response to Recommendation No. 3:**

This recommendation requires further analysis. However, the District's General Legal Counsel, based on the information provided to his office, has made a preliminary determination that the "Franchise Fees" may be used for General Fund purposes. Moreover, the District disagrees with this finding as it mischaracterizes the nature and utilization of the Rubbish Fund which contains Waste Fees, Franchise Fees and the waste hauler's "other costs of doing business." As referenced above, technically, the source of the "loan" proceeds is from the District's "Environmental Account Operating Budget" that consists solely of the Franchise Fees and interest earned thereon; it does not include any waste hauling fees.

Again, the District contracts with Burrtec via a Franchise Agreement to collect, transfer, recycle, process and dispose of residential and commercial solid waste. Property owners within the District are charged a solid waste fee ("Waste Fee"). The Waste Fees are charged to residential and commercial properties for curbside solid waste collection. The Waste Fees collected from residential users are placed on the property tax rolls to be collected by the County, whereas the Waste Fees collected from commercial users are collected directly by Burrtec.

The District does not dispute that solid waste collection is mandated as part of property ownership and is therefore a property-related fee which is subject to applicable restrictions set forth at Proposition 218 and the California Constitution, Section XIII C, and Section XIII D, including the restriction that use of the proceeds must be limited to the purpose for which the fee was collected.

Burrtec pays the District a negotiated Franchise Fee, which has been set at 10% of the "Gross Receipts." In the Franchise Agreement, "Franchise Fee" means "the fee paid by the Company to the District . . . for the right to hold the Franchise . . ." The Franchise Agreement further defines, "Gross Receipts" as follows:

### *1.28 Gross Receipts*

*"Gross Receipts" means any and all revenues, receipts, or compensation in any form received by the Company or its subsidiaries, parent companies or other Affiliates of the Company, for the Collection and transportation of Solid Waste pursuant to this Agreement, including, but not limited to, monthly Customer fees for Collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business. Sales revenue from the sale of Recyclable Material is included in Gross Receipts; revenue generated from as the operator/owner of landfills and/or transfer stations are excluded to the extent the fees charged this Agreement for such services are no more than the fair market value for such expenses. "Gross Receipts" does include disposal charges, tipping fees, Disposal Costs, AB 939 charges. [Emphasis added.]*

As reflected above, the Gross Receipts, upon which the 10 percent Franchise Fee is calculated includes proceeds from the paid Waste Fees, Franchise Fees and Burrtec's "other cost[s] of doing business." The revenue sources for the Franchise Fee also include revenue from the sale of "Recyclable Materials," and excess revenue (greater than fair market value) generated from landfills and transfer stations owned and operated by Burrtec.

It has long been held that franchise fees generally fall within article XIII C's exception for charges for the use of government property (i.e., fees for use of government property are not taxes requiring voter approval). Franchise fees generate discretionary (i.e., general fund) revenues, which may be used for any lawful purpose. The loan proceeds used to fund law enforcement services were derived solely from the Franchise Fees rather than the Waste Fees, albeit the Franchise Fees and the Waste Fees are both deposited into the same Rubbish Fund, with the Franchise Fees eventually paid by Burrtec to the District.

### ***Maintaining for support***

#### **Recommendation No. 4:**

*The Board spend the proceeds of the franchise fee exclusively for community clean up.*

#### **Response to Recommendation No. 4:**

The District respectfully submits that this recommendation should not be implemented because it is not warranted, nor is it reasonable, in the context of the level of law enforcement services that are currently inadequate to meet the public safety needs and demands of the community.

As discussed above, the District's General Legal Counsel, based on the information provided to his office, has made a preliminary determination that the portion of the Rubbish Fund that constitutes the revenue from "Franchise Fees" may be used for General Fund purposes; whereas, the portion of the Rubbish Fund that constitutes the revenue from the "Waste Fees" may not be used for any purpose unrelated to waste collection, cleanup, etc. Essentially, the District does not dispute the Grand Jury's legal determination that the Waste Fee is a property-related fee which is

subject to applicable restrictions set forth at Proposition 218 and the California Constitution, Section XIII C, and Section XIID, including the restriction that use of the proceeds must be limited to the purpose for which the fee was collected.

Again, the Rubbish Fund contains the Franchise Fees which are eventually paid by Burrtec to the District and the proceeds from the Waste Fees paid by the property owners. The District has, since inception of the Waste Fee, utilized Waste Fee proceeds solely for waste collection, cleanup, etc. However, the portion of the Rubbish Fund that constitutes the revenue from the payment of the Franchise Fees by Burrtec, which is deposited the District's Environmental Account Operating Budget, has been used as the source of the loan proceeds to the General Fund.

As discussed throughout this response, it has long been held that franchise fees generally fall within article XIII C's exception for charges for the use of government property (i.e., fees for use of government property are not taxes requiring voter approval). Franchise fees generate discretionary (i.e., general fund) revenues, which may be used for any lawful purpose. Again, the portion of the Waste Fees paid by the property owners have been used exclusively for the purposes it was collected – hauling waste. The loan proceeds, however, used to fund law enforcement services were derived solely from the Franchise Fees and the interest earned thereon, rather than the Waste Fees, although both the Franchise Fees and the Waste Fees are both initially deposited into the same Rubbish Fund, with the Franchise Fee (10% of the Gross Receipts) eventually paid by Burrtec to the District.

#### **End of Responses**

In closing, the District hopes its responses to the Grand Jury Report are adequate; however, please do not hesitate to contact me at (760) 396-1014 or [scvcsd@verizon.net](mailto:scvcsd@verizon.net) if you need any further clarification or information regarding the District's responses as described herein.

Respectfully submitted,



Rebecca Broughton, President  
Board of Directors  
Southern Coachella Valley Community Services District